

JUL 26 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHARD EARL ODEN,

Petitioner - Appellant,

v.

MATTHEW C. KRAMER, Warden,

Respondent - Appellee.

No. 05-16155

D.C. No. CV-00-02066-MCE/JEM

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, District Judge, Presiding

Submitted July 24, 2006^{**}
San Francisco, California

Before: SILVERMAN and RAWLINSON, Circuit Judges, and BERTELSMAN^{***},
Senior Judge.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

^{***} The Honorable William O. Bertelsman, Senior United States District Judge for the Eastern District of Kentucky, sitting by designation.

Richard Oden appeals from the denial of his petition for writ of habeas corpus and request for an evidentiary hearing. He claims that his trial counsel was ineffective for not putting on a mental health defense. We affirm.

Nothing in the record suggests that Oden's use of prescribed seizure medication left him intoxicated on the day of the shooting or rendered his confession involuntary. Nor was there any reason for his counsel to believe that Oden suffered from a major mental defect or disorder, especially in light of the findings of the two court-appointed psychiatrists. Although he now takes issue with those findings, Oden does not specify – and we fail to see – how the medical records that he submitted cast doubt on their accuracy.

Under the circumstances, the decision to pursue a different trial strategy – that the shooting was accidental – does not constitute ineffective assistance of counsel. Indeed, that Oden was convicted of attempted voluntary manslaughter instead of attempted murder evidences highly effective representation given the facts of the case. For all these reasons, Oden's claim under the ADA also fails.

AFFIRMED.